IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

OP.No. 2698 of 1997(U)

PETITIONER:

SR.NIRMALA,
MOTHER SUPERIOR,
BATHANI CONVENT,
KUPPADY, SULTHAN BATHERY.

BY ADV. SRI.T.A.RAMADASAN
SRI.K.PRAVEENKUMAR

RESPONDENTS:
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1. **THE DISTRICT COLLECTOR, WAYANAD.**

2. **THE REVENUE DIVISIONAL OFFICER,**
(DEPUTY COLLECTOR (L.T.) CUM ADMINISTRATIVE OFFICER),
AMBALAVAYAL, WAYANAD.

3. **THE STATE OF KERALA,**
REP.BY ITS CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM.

4. **THE TAHSILDAR, SULTHAN BATHERY, WYNAD.**

5. **MADHAVAN, S/O.APPU,**
KUPPADI AMSOM AND DESOM,
BATHERY TALUK, KUPPADI KUNNIL, WAYANAD.

BY GOVERNMENT PLEADER SMT. K.R. DEEPA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON 22/06/2007 DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.4951/1997 IN O.P.NO.2698/1997 U

DISMISSED

22/06/2007 **SD/- KURIAN JOSEPH, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE STATEMENT FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD. 23/03/96.**

EXT.P2: **COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT DTD. 9/04/96.**

EXT.P3: **COPY OF THE APPEAL MEMORANDUM FILED BY THE PETITIONER DTD. 24/08/1996.**

EXT.P4: **COPY OF THE ORDER OF THE 1ST RESPONDENT DTD. 11/12/1996.**

/TRUE COPY/

KSS

KURIAN JOSEPH, J.

O.P.No. 2698 of 1997

Dated this the 22nd day of June, 2007

JUDGMENT

The writ petition is filed aggrieved by Exts.P2 and P4 proceedings initiated under the provisions of the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 whereby the petitioner was directed to surrender an extent of 28¾ cents of property to the original vendors who are members of the Scheduled Tribe, on the ground that the same is hit by the restrictions on transfer of such lands by members belonging to Scheduled Tribe. The property is purchased during the period 1973 to 1983. In view of the recent enactment – The Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act, 1999 the petitioner is entitled to succeed since such transfers of small extents are protected by proviso to Section 5 of the Act. Section 5 reads as follows:-

> "5. Certain transfers to be invalid.-(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, or in any contract, custom or usage, or in any judgment, decree or order of any Court, any transfer of land possessed, enjoyed or

> owned by a member of a Scheduled Tribe to a person other than a member of a Scheduled Tribe, effected on or after the 1st day of January, 1960, and before the commencement of this Act shall be deemed to be invalid:
>
> Provided that nothing in this section shall render invalid any transfer of land possessed, enjoyed or owned by a member of a Scheduled Tribe to a person other than a member of a Scheduled Tribe effected during the aforesaid period and the extent of which does not exceed two hectares."

2. The extent as already noted above is only 28¾ cents. The transfer is between 1973 to 1983. Thus the petitioner is entitled to succeed in view of the proviso quoted above. The impugned orders are hence quashed.

The writ petition is allowed as above.

(KURIAN JOSEPH, JUDGE)

ahg.

KURIAN JOSEPH, J.

O.P.NO.2698/1997

JUDGMENT

22nd June, 2007